

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON JOSEPH CUNNINGHAM,

Petitioner,

v.

WARDEN, FCI MENDOTA,

Respondent.

No. 1:25-cv-00180-KES-SKO (HC)

ORDER VACATING FINDINGS AND  
RECOMMENDATION  
(Doc. 11)

ORDER DIRECTING CLERK OF COURT TO  
DISREGARD PETITION FILED IN THIS  
CASE, OPEN A NEW § 2255 CASE  
UTILIZING THE DOCUMENT, AND  
TRANSFER CASE TO THE EASTERN  
DISTRICT OF WASHINGTON  
(Doc. 9)

ORDER RESETTING BRIEFING  
SCHEDULE

[FOURTEEN-DAY DEADLINE]

Petitioner is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On January 24, 2025, Petitioner filed a habeas petition in the Sacramento Division of the Eastern District of California. (Doc. 1.) Because Petitioner is incarcerated in the Federal Correctional Institution in Mendota, California, and the institution lies within the Fresno Division of the Eastern District, the case was transferred to this Court on February 11, 2025. (Doc. 4.)

On February 13, 2025, the Court issued an order directing Respondent to file a response to the petition. (Doc. 7.) Thereafter, on April 7, 2025, Petitioner filed a subsequent petition for writ

1 of habeas corpus in this Court. (Doc. 9.) A second petition filed while another one is pending is  
2 generally construed as a motion to amend the first petition. Goodrum v. Busby, 824 F.3d 1188,  
3 1192 (9th Cir. 2016); see also Woods v. Carey, 525 F.3d 886, 890 (9th Cir. 2008). Accordingly,  
4 on April 9, 2025, the Court construed Petitioner's petition as a motion to amend and  
5 recommended denying said motion. (Doc. 11.)

6 On April 16, 2025, Petitioner filed objections to the Findings and Recommendation. (Doc.  
7 12.) Petitioner states he did not intend to amend the petition, and misfiled the petition in this  
8 Court. He states he should have filed the petition in the Eastern District of Washington, as that is  
9 the court of conviction.

10 Accordingly, IT IS HEREBY ORDERED:

- 11 1) The Findings and Recommendation issued on April 9, 2025, (Doc. 11), is VACATED;  
12 2) The Clerk of Court is directed to disregard the petition of April 9, 2025, (Doc. 9) in  
13 this case; open a new § 2255 case using the petition, and transfer the petition to the  
14 Eastern District of Washington; and  
15 3) The deadline to file a response to the petition is set fourteen (14) days from the date of  
16 service of this order.

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18 IT IS SO ORDERED.

19 Dated: April 21, 2025

/s/ Sheila K. Oberto  
20 UNITED STATES MAGISTRATE JUDGE

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